

DONELAN, CLEARY, WOOD & MASER, P. C.

ATTORNEYS AND COUNSELORS AT LAW

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2-142A017

May 21, 1992

17256-C
RECORDATION NO. FILED 105

MAY 21 1992 -11 22 AM

INTERSTATE COMMERCE COMMISSION

The Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Secretary Strickland:

Enclosed for recordation, under the provisions of 49 U.S.C. § 11303(a) and the regulations thereunder, are two original counterparts of an Equipment Purchase and Assignment Agreement between The David J. Joseph Company ("Assignor") and Unionbanc Leasing Corporation ("Assignee"), a secondary document, dated May 6, 1992, relating to the Memorandum of Lease Agreement between Greenbrier Railcar, Inc. and Westvaco Corporation, a primary document, dated as of December 14, 1990, recorded under Recordation No. 17256, as amended by Amendment to the Memorandum of Lease Agreement, a secondary document, dated as of July 18, 1991, recorded under Recordation No. 17256-A, and as assigned by Memorandum of Assignment Agreement between Greenbrier Railcar, Inc. and The David J. Joseph Company, a secondary document, dated as of August 30, 1991, recorded under Recordation No. 17256-B.

It is my understanding that the recordation number to be assigned to this document as described in the preceding paragraph, will be 17256-C.

The names and addresses of the parties to the enclosed documents are as follows:

Equipment Purchase and Assignment Agreement

ASSIGNOR: The David J. Joseph Company
300 Pike Street
Cincinnati, Ohio 45202-4214

David J. Joseph
L. H. H. H.

MAY 21 11 11 AM
MOTOR OPERATING

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ASSIGNEE: Unionbanc Leasing Corporation
125 Summer Street
Boston, Massachusetts 02110

A general description of the railroad equipment covered by the enclosed document is attached hereto as Schedule 1.

It is also requested that this document be cross-indexed in the "Vendee" Index Book ("white pages") under the name of the Assignee, namely under: Unionbanc Leasing Corporation.

The undersigned is the attorney-in-fact of Unionbanc Leasing Corporation. Please return the extra copies of the enclosed documents to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereof.

Also enclosed is a remittance in the amount of \$16.00 for the required recording fees.

A short summary of the document to appear in the index follows:

SECONDARY DOCUMENT

Equipment Purchase and Assignment Agreement between The David J. Joseph Company ("Assignor") and Unionbanc Leasing Corporation ("Assignee"), dated May 6, 1992, relating to the Memorandum of Lease Agreement between Greenbrier Railcar, Inc. and Westvaco Corporation, dated as of December 14, 1990, recorded under Recordation No. 17256, as amended and assigned, evidencing that Assignee has acquired all rights of Assignor in, to, and under the Lease for forty (40) 100-ton rotary dump woodchip gondola railcars with a 7,452 cubic foot capacity bearing identification marks and numbers WVCX 2120 through WVCX 2159, inclusive.

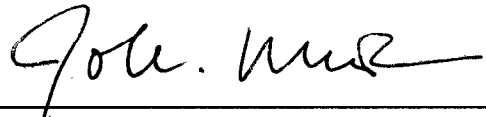
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Respectfully submitted,

By: 

John K. Maser III
Attorney-In-Fact

2970-001

SCHEDULE I

DESCRIPTION OF RAILROAD EQUIPMENT COVERED BY EQUIPMENT PURCHASE AND ASSIGNMENT AGREEMENT

1. Forty (40) 100-ton rotary dump woodchip gondola railcars with a 7,452 cubic foot capacity bearing the following identification marks and numbers:

WVCX 2120 through WVCX 2159, inclusive

MAY 21 1992 - 11 22 AM

Westvaco

INTERSTATE COMMERCE COMMISSION

EQUIPMENT PURCHASE AND ASSIGNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 6th day of May, 1992 by and between Unionbanc Leasing Corporation (herein called "Purchaser"), a California corporation, having a place of business at 125 Summer Street, Boston, Massachusetts 02110, and The David Joseph Company (herein called "Seller"), a Delaware corporation, having its principal place of business at 300 Pike Street, Cincinnati, Ohio 45202.

WHEREAS, Greenbrier Railcar, Inc., ("Greenbrier") as Lessor and Westvaco Corporation ("Lessee"), a Delaware corporation, having its principal place of business at New York, NY as Lessee, have entered into a Lease Agreement dated as of December 14, 1990, (herein, as amended and supplemented from time to time in accordance with its terms, called the "Lease"), a copy of which is attached hereto as Exhibit A, under and pursuant to which, and upon and subject to the terms and conditions of which, Greenbrier has leased to Lessee, and Lessee has leased from Greenbrier the equipment covered by and described on Schedule A attached hereto and made a part hereof and copies of which are attached hereto (said equipment being herein collectively called the "Equipment" or "Items of Equipment" and individually called an "Item of Equipment");

WHEREAS, a Memorandum of the Lease was duly filed and recorded as a primary document with the Interstate Commerce Commission ("Commission") on March 18, 1991 and assigned Recordation No. 17256;

WHEREAS, the Lease was amended by that certain Amendment dated as of July 18, 1991 between Greenbrier and Lessee, which was duly filed and recorded with the Commission as a secondary document on August 9, 1991 and assigned Recordation No. 17256-A;

WHEREAS, Greenbrier, as Assignor, and the Seller, as Assignee, entered into a Memorandum of Assignment Agreement, dated as of August 30, 1991, which was duly filed and recorded with the Commission as a secondary document on November 21, 1991 and assigned Recordation No. 17256-B, under which Greenbrier assigned to the Seller the Lease and the corresponding Items of Equipment, which are the subject of that Lease;

WHEREAS, on the Closing Date (hereinafter defined) Seller desires to sell the Equipment to Purchaser, to assign to Purchaser rights of Seller under the Lease, and Purchaser desires to purchase the Equipment, accept such assignment on the Closing Date, all for the purchase price, and upon and subject to the terms and

conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Seller and Purchaser do hereby agree as follows:

1. Definitions. All capitalized terms used herein, which are not otherwise defined herein, shall have the respective meanings given to such terms in the Lease. The term "Operative Agreements" as used herein means, collectively, the Lease, this Agreement, the Bill of Sale and Assignment (hereinafter defined).

2. Sale of Equipment and Assignment of Rights; Assumption of Obligations. Seller hereby agrees that on the Closing Date, upon and subject to the fulfillment of all conditions precedent specified in Section 4 hereof, it will sell, transfer and convey all of its rights, title and interests in and to the Equipment to Purchaser and will assign to Purchaser (i) all of Seller's rights, title and interests in, to and under the Lease, including, without limitation, all rents and all other amounts due or to become due under the Lease, from and after the Closing Date, and the right to enforce, Purchaser's name but without cost or expense to Seller, all of Seller's rights under the Lease. Purchaser hereby agrees that on the Closing Date, upon and subject to the fulfillment of all conditions precedent specified in Section 4 hereof, Purchaser (i) will purchase the Equipment and pay Seller the purchase price for same specified in Section 3 hereof and in the manner specified therein. Notwithstanding anything herein to the contrary, Purchaser does not assume any obligations of Seller with respect to among other things, the maintenance obligations of Seller set forth in the Lease. Unless otherwise agreed to in writing by Seller and Purchaser, the Closing Date shall be May 6, 1992. On the Closing Date Seller shall deliver to Purchaser the documents specified in Section 4A hereof, as against receipt from Purchaser on the Closing Date of payment of the purchase price payable by Purchaser for the Equipment and the documents specified in Section 4B hereof. If the Closing Date is not a Business Day, the Closing Date will be the next succeeding Business Day. As used herein, the term "Business Day" means any day other than a day on which banking institutions in the Commonwealth of Massachusetts are authorized by law to close.

Anything in this Section 2 to the contrary notwithstanding, it is agreed that Seller does not hereby assign, and Seller hereby retains the following rights (herein called "Seller's Retained Rights): (a) the right to payment of (i) all rents and all other amounts due and payable under the Lease for all rental periods ending prior to the Closing Date, and (ii) the right to the payment of all indemnities and liability insurance proceeds

which are now or hereafter payable to Seller for its own account as previous lessor under the Lease or as previous owner of the Equipment, and (b) the right to enforce payment of the amounts referred to in the foregoing clause (a) of this paragraph without cost or expense to Purchaser.

3. Purchase Price for the Equipment. The total purchase price for the Equipment (hereinafter called the "Purchase Price") shall be _____ dollars (\$ _____), and shall be payable by Purchaser to Seller on the Closing Date by wire transfer, in immediately available funds, to Starbank, Cincinnati, Ohio, ABA# 042000013, directed to the account of The David J. Joseph Company, Account #900-906-9. The amount, if any, of the Purchase Price allocable to any Item of Equipment be the amount for such Item set forth on Schedule A attached hereto and made a part hereof.

4. Conditions Precedent.

(A) Closing Date; No Event of Default under Lease; Acceptance of Equipment under Lease. The obligations of Seller and Purchaser under Section 2 hereof, are subject to the conditions that (i) unless waived in writing by Seller and Purchaser on or prior to the Closing Date, no Event of Default under the Lease, or event which with the passage of time or otherwise would become an Event of Default under the Lease, has occurred and is continuing on the Closing Date.

(B) Delivery of Documents. The obligations of Seller under Section 2 hereof are subject to the further condition that, on the Closing Date, Purchaser shall deliver to Seller the documents specified in clause (b) of this Section 4(B), and the obligations of Purchaser under Section 2 hereof are subject to the further condition that, on the Closing Date, Seller shall deliver to Purchaser the documents specified in clause (a) of this Section 4(B):

(a) Documents to be delivered by Seller to Purchaser:

(i) a Bill of Sale and Assignment for the Equipment, in the form of same attached as Exhibit B hereto (herein called the "Bill of Sale and Assignment"), dated the Closing Date and executed by Seller;

(ii) the original counterpart of the Lease, as executed by Seller and Lessee;

(iii) a certificate, dated the Closing Date and executed by the President or a Vice President of Seller, to the effect that the representations and warranties of Seller contained

herein are true and correct as of the Closing Date as if made on the Closing Date, except for any such representations and warranties which are not then true and correct as a result of the failure of either of the conditions precedent set forth in Section 4(A) hereof to have been satisfied;

(iv) a certificate of the Secretary or Assistant Secretary of Seller dated the Closing Date and certifying to (a) the name(s), title(s) and specimen signature(s) of the officer(s) of Seller executing the Operative Agreements to which Seller is a party, and (b) evidence, reasonably satisfactory to Purchaser, of the authority of such officer(s) to execute and deliver the Operative Agreements on behalf of Seller;

(v) evidence, reasonably satisfactory to Purchaser, of insurance coverage protecting Purchaser's interests with respect to the Items of Equipment, and with such coverages to be of the types and in the amounts specified in the Lease; and

(vi) relevant Interstate Commerce Commission filings and legal opinions requested by Purchaser with respect thereto.

(b) Documents to be delivered by Purchaser to Seller:

(i) Appropriate documentation warranting exemption of this Sale from sales and use tax for the state or states in which the Items of Equipment are located (unless the laws of such state or states do not permit the issuance of such documentation for such purpose by Purchaser), duly executed by Purchaser;

(ii) such other documents, opinions and certificates as Seller shall reasonably request.

5. Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

(a) Seller is a corporation duly organized and validly existing under the laws of the State of Delaware, and has the authority to execute and deliver the Operative Agreements and to perform the terms thereof;

(b) each of the Operative Agreements to which Seller is a party, have been duly authorized by all necessary corporate action on the part of Seller, and have each been, or upon their execution will be, duly executed and delivered by Seller, and neither the execution and delivery of any of such Operative Agreements nor the consummation of the transactions contemplated therein, nor

compliance by Seller with any of the terms and provisions thereof, will contravene or result in any breach of or constitute any default under, any indenture, mortgage, loan or credit agreement, Articles of Organization, by-laws or other agreement or instrument to which Seller is a party or by which Seller or its properties may be bound or affected;

(c) each of the Operative Agreements heretofore or being herewith executed by Seller constitute, and each of the Operative Agreements hereafter executed by Seller will upon the execution thereof by Seller constitute, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally;

(d) on the Closing Date, neither the Equipment nor the rights of Seller (excluding Seller's Retained Rights) under the Operative Agreements, in each case to the extent that the same relate to the Equipment, will have been sold, assigned or transferred by Seller to anyone other than Purchaser;

(e) on the Closing Date, Seller will have such title to each Item of Equipment as was conveyed to it, and each Item of Equipment shall, on the Closing Date, be free and clear of any lien (i) arising solely from an independent act of or claim against Seller and which Lessee is not required to discharge or indemnify against under the Lease, and (ii) other than the rights of Lessee under the Lease and Seller's Retained Rights;

(f) Seller has no actual knowledge of the occurrence of any Event of Default under the Lease;

(g) prior to the Closing Date, no amendment to the Operative Agreements shall have been agreed to by Seller after the date hereof, except any such as may have been agreed to in writing by Purchaser.

6. Purchaser's Representations and Warranties. Purchaser hereby represents and warrants to Seller as of the date hereof and as of the Closing Date that:

(a) Purchaser is a corporation duly organized and validly existing under the laws of the State of California, having, as its place of business and chief executive office, its address set forth above, and Purchaser has the authority to execute and deliver the documents specified in paragraph (b) of this Section 6 and to perform the terms thereof, and to purchase the Equipment and pay the Purchase Price therefor;

(b) this Agreement, the Acknowledgement and Acceptance, and each related instrument and document executed or to be executed by Purchaser in connection herewith or therewith (herein called a "Purchaser Related Document"), have been duly authorized by all necessary corporate action on the part of Purchaser, and each have been, or upon their execution will be, duly executed and delivered by Purchaser, and neither the execution and delivery of this Agreement, the Acknowledgment and Acceptance or any Purchaser Related Document, nor the consummation of the transactions contemplated herein or therein, nor compliance by Purchaser with any of the terms and provisions hereof or thereof, will contravene or result in any breach of or constitute any default under, any indenture, mortgage, loan or credit agreement, Articles of Incorporation or similar document, by-laws or other agreement or instrument to which Purchaser is a party or by which Purchaser or its properties may be bound or affected; and

(c) this Agreement constitutes, and the Acknowledgment and Acceptance and each Purchaser Related Document will upon their respective execution by Purchaser constitute, the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally.

7. NON-RECOURSE SALE AND ASSIGNMENT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9 HEREOF, THE SALE AND ASSIGNMENT TO BE EFFECTED PURSUANT TO THIS AGREEMENT IS WITHOUT RECOURSE TO SELLER. SELLER DOES NOT HEREBY ASSUME AND SELLER SHALL NOT HAVE ANY LIABILITY WHATSOEVER FOR, THE PAYMENT OR PERFORMANCE BY LESSEE OF ANY OF LESSEE'S OBLIGATIONS UNDER THE LEASE, OR UNDER ANY INSTRUMENT OR DOCUMENT RELATED THERETO, IT BEING AGREED THAT NEITHER PURCHASER NOR ANY OF PURCHASER'S SUCCESSORS OR ASSIGNS SHALL HAVE ANY RECOURSE WHATSOEVER TO SELLER OR TO ANY OF SELLER'S SUCCESSORS OR ASSIGNS FOR ANY NON-PAYMENT OR NON-PERFORMANCE BY LESSEE OR FOR ANY LOSSES, DEFICIENCIES, DAMAGES OR LIABILITIES ARISING OUT OF OR RESULTING FROM THE OCCURRENCE OF AN EVENT OF DEFAULT UNDER THE LEASE.

8. Purchaser's Covenants. Purchaser hereby covenants and agrees that, provided no Event of Default has occurred and is continuing under the Lease, Lessee's quiet enjoyment and use of the Equipment during the Term with respect to the Equipment shall not be interfered with by Purchaser or by any assignee of Purchaser (other than Seller) or by the holder of any lien or encumbrance (other than Seller) resulting from acts or omissions of Purchaser.

9. General Indemnity; Failure to Perform.

A. General Indemnity. Seller hereby agrees that in the event (but only in the event) that the transactions contemplated by Section 2 of this Agreement are consummated on the Closing Date (or any extension thereof agreed to in writing by Seller and Purchaser) Seller will indemnify, protect, save, defend and hold harmless Purchaser and its successors and permitted assigns, from and against any and all fees, liabilities, losses, damages, penalties, claims, demands, actions, suits, judgments, costs and expenses, including legal expenses, imposed on, incurred by, or asserted against Purchaser and its successors and permitted assigns, with respect to any Item of Equipment, which solely and directly result from and are attributable to any breach by Seller (or its successors and permitted assigns of (a) any of Seller's obligations under the Lease, other than the obligations thereunder assumed by Purchaser pursuant to Section 2 hereof, or (b) any of Seller's covenants, agreements, representations and warranties hereunder or in the Bill of Sale and Assignment. Purchaser hereby agrees that in the event (but only in the event) that the transactions contemplated by Section 2 of this Agreement are consummated on the Closing Date (or any extension thereof agreed to in writing by Seller and Purchaser) Purchaser will indemnify, protect, save, defend and hold harmless Seller and its successors and permitted assigns from and against any and all fees, liabilities, losses, damages, penalties, claims, demands, actions, suits, judgments, costs and expenses, including legal expenses, imposed on, incurred by, or asserted against Seller or its successors or permitted assigns with respect to any Item of Equipment, which solely and directly result from and are attributable to any breach by Purchaser (or its successors and assigns) of (a) any obligations under the Lease assumed by Purchaser pursuant to Section 2 hereof, or (b) any of Purchaser's covenants, agreements, representations and warranties hereunder or under the Acknowledgment and Acceptance.

B. Failure to Perform. In the event of the failure by Seller to sell the Equipment to Purchaser and to assign to Purchaser the rights which are to be assigned to Purchaser, as set forth in Section 2 hereof, or in the event of the failure by Purchaser to purchase the Equipment, to pay the Purchase Price for the Equipment and to assume the obligations of Seller under the Lease which are to be assumed by Purchaser, as set forth in said Section 2, the party failing to so perform (the "Non-Performing Party") shall be liable to the other party for any losses or damages actually incurred or sustained by such other party as a result of such failure of performance; provided, however, that the Non-Performing Party shall not have any such liability to the other party if such failure of performance results from the failure of any condition precedent set forth under Section 4 hereof and

constituting a condition precedent to such Non-Performing Party's obligations under Section 2 hereof, to be fulfilled or satisfied.

10. Assignments. Neither Seller nor Purchaser may assign any of their rights or obligations hereunder without the prior written consent of the other; provided, however, that either Seller or Purchaser may, without obtaining the prior written consent of the other, assign their rights and obligations hereunder to any of their respective subsidiaries or affiliates if (i) such assigning party has executed and delivered to the other party a guaranty, in form and substance satisfactory to the other party, of the payment and performance of all of such assignee's obligations hereunder, and (ii) such assigning party has furnished to the other party an opinion of such assigning party's counsel (who shall be reasonably acceptable to such other party) in form and substance satisfactory to such other party to the effect that such guaranty has been duly authorized, executed and delivered on behalf of such assigning party and constitutes its valid, binding and enforceable obligation.

11. Notices. All notices required or provided for under the terms and provisions hereof shall be in writing, and any such notice shall be deemed given when personally delivered or deposited in the United States mails, with proper postage prepaid for first class certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at their respective addresses as set forth herein, or at such other address as either of them shall, from time to time, designate in writing to the other.

12. Governing Law. This Agreement shall be deemed to be a contract made under seal and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, including all matters of construction, validity and performance.

13. Amendments. This Agreement may not be modified or amended except by an instrument in writing executed by the duly authorized officers of Seller and of Purchaser.

IN WITNESS WHEREOF, Seller and Purchaser have each caused this Agreement to be executed by their respective corporate officers, hereunto duly authorized, on the date first above written.

Attest:


Assistant Secretary

THE DAVID J. JOSEPH COMPANY

By 

Its VICE PRESIDENT

Westvaco

(Corporate Seal)

UNIONBANC LEASING CORPORATION

By

Leo P. Payne

Its Senior Vice President

STATE OF OHIO)
) ss.
 COUNTY OF HAMILTON)

On this 13th day of May, 1992, before me personally appeared Douglas F. McMillan to me personally known, who being by me duly sworn, says that he is the Vice President of THE DAVID J. JOSEPH COMPANY that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of the said instrument was his free act and deed.


 NOTARY PUBLIC

CAROLYN A. TRAINOR
 Notary Public, State of Ohio
 My Commission Expires March 8, 1993

STATE OF MASSACHUSETTS)
) ss.
 COUNTY OF SUFFOLK)

On this 14th day of May, 1992, before me personally appeared Leo R. Chausse, to me personally known, who being by me duly sworn, says that he is the Senior Vice President of UNIONBANC LEASING CORPORATION that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of the said instrument was his free act and deed.


 NOTARY PUBLIC

SCHEDULE A

1. Forty (40) 100-ton rotary dump woodchip gondola railcars with a 7,452 cubic foot capacity bearing the following marks and numbers:

WVCX 2120 through WVCX 2159, inclusive.

LEASE AGREEMENT

By and Between

GREENBRIER RAILCAR, INC.
(LESSOR)

and

WESTVACO CORPORATION
(LESSEE)

DECEMBER 14, 1990

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LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made as of December 14, 1990 by and between GREENBRIER RAILCAR, INC., a Delaware corporation, located at One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035 as lessor, or its assignee ("Lessor"), and Westvaco Corporation, a Delaware corporation, located at 299 Park Avenue, New York, New York 10171, as lessee ("Lessee").

1. Scope of this Agreement

a) Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein and in the Schedule(s) attached hereto, a number of items of equipment bearing the reporting marks and of the type, construction and other description set forth in any Schedule attached hereto and executed by the parties concurrently herewith or hereafter. The word "Schedule" includes the Schedules executed herewith and any Schedules and amendments which are subsequently executed by both parties hereto. Schedules may include exhibits which shall be distinct from exhibits to this Agreement and identified as "Exhibit A.1," "Exhibit B.1," etc. or "Exhibit A.2," "Exhibit B.2," etc. Letters distinguish each Exhibit and numbers name the corresponding Schedule. When any such Schedule or amendment is so executed it shall become part of this Agreement. "Cars" shall mean all items of equipment subject to this Agreement and "Car" shall mean an individual item of equipment. The terms and provisions of each Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.

b) It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the owner and lessor of all Cars and that no agency, joint venture or partnership is being created. Lessee's interest in the Cars shall be that of lessee only. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of this Agreement with respect to the Car(s) listed on any Schedule attached to the Agreement shall be as set forth on such Schedule.

3. Supply Provisions

a) The Lessee hereby approves the specifications for the Cars described in Exhibit C.1 of the applicable Schedule. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement on the date each Car is inspected and accepted by Lessee or its agent at the point of tender as set out in each Schedule by execution of Exhibit A.1 (Certificate of Acceptance) of the applicable Schedule ("Delivery" or "Delivered"). The loading of any Car before Delivery by Lessee, or at its direction, shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purpose of transporting the commodities then and thereafter loaded therein or thereon.

b) Prior to the Commencement Date, as defined in Schedule No. 1, Lessee shall execute and deliver each of the following documents, in each case in form, substance and manner satisfactory to Lessor: (1) a Schedule pertaining to the Cars then being leased; (2) a Certificate of Incumbency in the form of Exhibit B attached hereto; (3) a certificate of insurance or other evidence satisfactory to Lessor that the requirements of Section 7 have been complied with; (4) a Consent and Agreement in the form of Exhibit A, if applicable; and (5) such other documents as Lessor may reasonably request. Commencing upon Delivery, Lessee shall be liable

for all costs, charges and expenses on account of or relating to transportation or movement of any Car from the point of tender. ~~XXXXXXXXXXXXXXXXXXXX~~ If lessor is required to pay any such amount, Lessee shall reimburse Lessor within thirty (30) days of receiving an invoice from Lessor for such amount.

c) Lessor shall not be responsible for failure to deliver or delay in delivering any Car due to casualties, repair and any contingency beyond its control, including, but not limited to labor disputes, defaults and delays of carriers, and defaults and delays of the Lessee or any persons directing or controlling the Lessee. At the time of delivery and after expiration of the lease and redelivery of cars, representatives of the Lessor and the Lessee will perform and execute joint inspection reports covering the condition of the leased Cars.

4. Recordkeeping

a) The party designated on the applicable Schedule shall be responsible for the preparation and filing of all documents relating to the registration, maintenance and recordkeeping functions normally performed with respect to railroad equipment of the type subject to this Agreement including, but not limited to: (1) preparation of appropriate Association of American Railroads ("AAR") interchange agreements with respect to the Cars; (2) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (3) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and any other regulatory agencies with respect to the Cars. Prior to delivery of the Cars, Lessor will cooperate with Lessee and upon request will supply any information it may have in its possession reasonably relating to Lessee's duties pursuant to this subparagraph.

b) Recordkeeping functions relating to the use of the Cars by Lessee and railroads, including but not limited to car hire reconciliation, collection and receipt of revenues from other railroad companies in accordance with applicable Car Hire Rules, the Car Service Rules and Interchange Rules, records pertaining to maintenance and repair, and billing in accordance with the AAR interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules") shall be performed by the party designated in the applicable Schedule. The party designated to perform recordkeeping in the applicable Schedule shall continue to do so for the duration of the Agreement with respect to the Cars described on such Schedule. All recordkeeping performed hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular business hours. Upon Lessor's request, Lessee shall promptly supply Lessor with telephone reports of the number of Cars in Lessee's possession and control.

5. Warranties and Waiver

Lessee acknowledges, warrants and agrees that the Equipment is of a size and capacity selected by Lessee and that Lessee is satisfied that same is suitable for its purposes. Lessor warrants and acknowledges that as of the Commencement Date Lessor is the Owner of the Cars and that each of the Cars is suitable for the general transportation of freight by rail and meets all American Association of Railroad Standards for such service. Except for Lessor's express warranty specifically set forth above, Lessee acknowledges and agrees that Lessor is not a manufacturer of the Cars; LESSEE ACKNOWLEDGES THAT LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE CARS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE CARS PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE CARS, PARTS, MATERIALS, OR THE LIKE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT, OR STRICT LIABILITY FOR ANY LOSS OF BUSINESS OR OTHER CONSEQUENTIAL LOSS OR DAMAGES, WHETHER OR NOT RESULTING FROM ANY OF

THE FOREGOING OR RESULTING FROM ANY REPAIRS OR MAINTENANCE TO ANY CARS, OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY CARS. Lessor hereby assigns to Lessee only during the Initial Term and any renewal hereunder as defined hereunder, unless an Event of Default exists, all the rights and benefits of the manufacturer's warranty, if any. Upon an Event of Default or expiration of the Initial Term or any renewal term, all such rights and benefits shall automatically, without notice or any further action, become the rights and benefits of Lessor.

6. Maintenance

This Section shall apply with respect to the Cars.

a) Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in AAR Interchange Rules; provided, however, that such inspections, repairs, maintenance and servicing ("Maintenance") shall be performed at Lessee's expense in the event that such Maintenance (1) was necessary due to cornering, sideswiping, derailment, misuse or similar occurrences while the cars are on tracks owned by Lessee, or any private siding or track or loading or unloading facility owned by Lessee or its agent or sublessee; or (2) arises in any instance in which the applicable Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such maintenance for cars not bearing Lessee's reporting marks; or (3) is specifically made Lessee's responsibility as may be stated in any Schedule to this Agreement. At Lessor's expense, except as stated in (1), (2) and (3) above, Lessee shall be required to preserve the Cars in good operating condition and in conformance with AAR and FRA rules governing the Interchange of freight cars at all times while the Cars are covered by this Agreement. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any maintenance required, pursuant to AAR Interchange Rule 107. Lessee, or its agent, may make running repairs, at Lessor's expense, to those parts of the Cars to facilitate immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. In cases where Lessee is liable for maintenance and repairs, all costs including without limitation transportation costs and expenses arising or relating to placing any Car in or returning any Car from a private contract shop shall be at Lessee's sole expense. Lessee shall be liable to Lessor for any rental revenues lost due to any unauthorized repair, alteration, improvement or addition. Any repairs performed to the Cars by Lessee, or its agent, at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties.

b) Lessor shall have the right to perform Non-Routine Repairs, as hereinafter defined, to the Cars at a location which is mutually agreeable to Lessor and Lessee or at a contract repair facility. Non-Routine Repairs ("Non-Routine Repairs") shall be defined as repairs of the type that Lessor determines that Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least five (5) business days in advance of performing such Non-Routine Repairs.

c) Lessor agrees to use reasonable efforts to make arrangements necessary to fulfill its maintenance obligations under this Section.

d) In the event the U.S. Department of Transportation, or any other governmental agency or nongovernmental organization having jurisdiction over operation, safety or use of railroad equipment, requires that Lessor add, modify or in any manner whatsoever adjust the Cars subject to this Agreement in order to qualify them for operation in railroad interchange, Lessee agrees to pay an additional monthly charge of \$1.75 per Car for each \$100.00 expended by Lessor on such Car, effective as of the date the Car is released from the shop after application of such additions, modifications or adjustments (hereinafter referred to as "Modifications").

No rental credit will be issued on Cars entering the shop for any Modifications for the first fifteen (15) days. In the event Lessor in its sole discretion determines that it would not be economical to make such Modification in view of the estimated remaining useful life or condition of such Car, and Lessor therefore elects to permanently remove such Car from Lessee's service, the rental with respect to such Car shall terminate upon the date specified in writing by Lessor; provided that such date must be prior to the date the Modification is so required to be made.

e) Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor.

f) Lessee shall use the Cars in compliance with the terms of this Agreement, in a careful and prudent manner, solely in the use, service and manner for which the Cars were designed and at no time shall be used in a service in which the Cars will be subjected to thaw heat, open flames or other unloading practices damaging to the Cars.

7. Insurance

a) During the term of this Agreement, Lessee shall keep or cause to be kept: (1) Comprehensive general liability insurance, including contractual coverage for the liabilities assumed herein, including bodily injury, death and property damage in a combined single limit of not less than \$5,000,000.00 per occurrence which maybe comprised of primary and excess insurance, and Lessee shall provide to Lessor certificates of insurance to evidence Lessee's compliance upon written request from Lessor. (2) All risk property damage insurance on the Cars in amounts not less than that shown in the applicable Stipulated Loss Value Schedule (SLV), or if such SLV schedule does not exist, then in amounts which are reasonable in light of industry practice for such Cars and Lessee shall provide to Lessor certificates of insurance to evidence Lessee's compliance upon written request from Lessor.

b) In the event that Lessor receives cancellation notice of the insurance described in this Section, Lessor shall have the right to purchase coverage and recover all premiums for such insurance from Lessee and/or declare this Agreement in default and proceed in accordance with Section 13.

c) The insurance requirements of Subparts a(1) and (2) above may be satisfied in whole or in part by a Lessee so long as such Lessee remains a qualified self-insurer under the applicable laws of the states under which it operates, provided, however, that such self-insurance must be consistent with prudent industry practice. In addition, Lessor shall be named as an additional insured (on its excess liability insurance) and loss payee (on its excess property damage insurance) on any umbrella or excess insurance which becomes effective when self-insured retention ("SIR") amount is exceeded and Lessee shall provide appropriate certificates of insurance to evidence Lessee's compliance.

d) Where Lessee purchases the insurances described in Subparts a(1) and (2) above, Lessee shall name Lessor as an additional insured on its liability insurance and loss payee on its all risk property damage insurance.

e) All insurance maintained pursuant to this section shall provide that: (1) The insurer hereunder waives all rights of subrogation against Lessee or Lessor, (2) Ten (10) days prior written notice of expiration or termination shall be given to Lessor and (3) Proceeds of any policy shall be payable notwithstanding any breach of warranty of Lessee.

8. Taxes

Responsibility for taxes for the Cars shall be as set forth on the applicable Schedule hereto.

9. Storage

In the event that any Car(s) is/are not in use while subject to this Agreement, Lessee shall be responsible for storing any such Car(s) on its own lines, if any, at its expense, or for paying all costs associated with storing such Car(s) at a location acceptable to Lessor. Any storage provided by Lessee which is off Lessee's property shall be as secure as if Lessee were storing its own property. If Lessor pays any such storage-related costs, Lessee shall reimburse Lessor for such costs within ten (10) days after receiving an invoice from Lessor for such costs.

10. Rent

a) During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on Delivery as defined in Section 3, Basic Rent and/or Interim Rent as defined in the applicable Schedule (sometimes referred to together herein as "rent" or "rental"), without deduction, set-off, counterclaim, recoupment, defense, notice or demand due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as to any Car which is out of service for more than fifteen (15) business days after such Car is delivered by Lessee to Lessor or its designee for repair or inspection at the Lessor's designated location, as a result of defective design, materials, workmanship and/or parts which is not the obligation of Lessee under this Agreement or any Schedule hereto (an "Out of Service Car").

b) Unless otherwise specified in the applicable Schedule hereto, and except as to any Out of Service Car after fifteen (15) business days as set forth in Paragraph a) of this Section, rental payments shall not abate if any Car is out of service for any other reason whatsoever, nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of the prohibition of or other restriction against Lessee's use of all or any such Cars, or the interference with such use by any person or entity.

c) Any costs incurred by Lessor in collecting any rent and/or other sums hereunder or pursuant to any Schedule hereunder wrongfully withheld by Lessee, including reasonable attorney fees and costs, will be paid by Lessee.

d) In the event any rental or other payments due Lessor hereunder are not paid within ten (10) days after the due date, Lessee shall also pay to Lessor interest on such amount at a rate equal to the prime rate of the Bank of California, N.A., as announced from time to time, plus three percent (3%) per annum or at such lesser rate as shall be the highest rate permitted by applicable law for the period until the rental or other payments shall be paid.

e) Lessee shall pay and discharge, when due, all amounts required to be paid by Lessee under this Agreement. Moreover, this Agreement shall not terminate except as expressly provided herein; nor shall the obligations of Lessee be affected nor shall Lessor have any liability whatsoever to Lessee by reason of any defect in, damage to, or loss of possession, or loss of use, or destruction of the Cars for any reason whatsoever, except notwithstanding the foregoing, the Lessor shall be liable to Lessee to the extent of its own negligence. It is the intention of the parties that rent and other amounts due hereunder shall continue to be payable in all events in the manner and at the time herein provided unless the obligation to pay the same shall be terminated pursuant to the express terms hereof.

11. Risk of Loss and Payment of Casualty

a) Lessee hereby assumes and shall bear the entire risk of any loss, theft, destruction or damage to each Car. In the event any Car shall be lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use, including without limitation, as a result of Lessee's negligence or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (hereinafter referred to as an "Event of Loss"), Lessee shall promptly (but in no event later than within thirty (30) days from the date Lessee has notice of an Event of Loss) notify Lessor as to the circumstances and time of such event. On the rental payment date next succeeding such notice, Lessee shall pay to Lessor in immediately available funds the Casualty Value for such Car as of the rental payment date for which rental payment was last made. Upon the making of a Casualty Value payment and payment of any other amounts then payable by Lessee hereunder with respect to a Car, the rental for such Car shall cease to accrue and such Car shall cease to be a part of the Cars leased hereunder. The Casualty Value for each Car for purposes of this Section shall be an amount equal to that percentage of Lessor's Cost applicable to that Car, as is set forth in Exhibit B.1 to the applicable Schedule.

b) Lessor may, at its expense, replace any Car that has suffered an Event or Loss with similar equipment (such item of equipment a "Replacement Car") upon prior written notice from Lessor to Lessee, with Lessee's consent not to be unreasonably withheld, in which event rental for such Replacement Car shall continue to accrue and such Replacement Car shall be a part of the Cars leased hereunder.

c) Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars; provided, however, that this shall not affect their respective obligations under this Section.

12. Possession and Use

a) Throughout the term of this Agreement and so long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars (1) in accordance with the terms of this Agreement; (2) in conformity with all Interchange Rules; (3) solely in the use, service and manner for which the Cars were designed; and (4) only within the continental limits of the United States of America or temporary or incidental use in Mexico and Canada.

b) Lessee agrees that the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located, in compliance with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, and in accordance with applicable rules established by the AAR, except that either Lessor or Lessee may, by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the applicant.

c) At Lessor's election, Cars may be marked to indicate the rights of Lessor, of an assignee, mortgagee, trustee, pledgee or security holder of Lessor, or of a lessor to Lessor. Except for renewal and maintenance of the aforesaid markings or lettering indicating that a Car is leased to Lessee or is assigned in accordance with demurrage tariffs, no lettering or marking shall be placed upon any Car by Lessee and Lessee will not remove or change any reporting mark or number indicated on the applicable Schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request.

d) Lessee shall not, with regard to the Cars, or any interest therein, including the revenues thereon, or with regard to the Agreement or any Schedule thereto, directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising by, through, or under it, except those created for the benefit of Lessor or any owner or secured party referred to

in this Section. Lessee shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Car. Lessee shall promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time. If Lessee fails to take action as described in the previous sentence, Lessor may, at Lessee's expense, take such action and Lessee shall pay the cost thereof within ten (10) days of receiving an invoice from Lessor for such costs.

- c) Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused, or shall result, except if caused by Lessor's negligence or willful misconduct. The Lessee agrees to assume responsibility for, and to indemnify Lessor against, and to save it harmless from, any such loss or damage or claim, including, but not limited to reasonable attorney fees and costs, therefor.

13. Default

a) The occurrence of any of the following events shall be an "Event of Default" hereunder:

(1) The nonpayment by Lessee of any sum required herein to be paid by Lessee when any such payment is due, and, such nonpayment shall continue unremedied for a period of ten (10) days;

(2) The breach by Lessee of any other term, or condition of this Agreement, which is not cured within thirty (30) days after receipt of written notice of such breach;

(3) The breach by Lessee of any representation or warranty herein;

(4) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder; or (b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of or extensions of indebtedness, if in the case of petitions or proceedings filed against Lessee, such Petitions or proceedings have not been dismissed within thirty (30) days of filing;

(5) The subjection of any portion of Lessee's property to any levy, seizure, assignment, application sale for or by any creditor or governmental agency the effect of which would be to materially impair Lessee's ability to perform its obligations hereunder.

b) Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law, at law or in equity, which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor, and Lessor, in any case, being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option:

(1) Terminate this Agreement and recover damages.

(2) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach hereof.

(3) By notice in writing to Lessee, terminate Lessee's right to possession and use of some or all of the Cars, whereupon all right and interest of Lessee in such Cars shall terminate; thereupon, Lessor may enter upon any premises where the terminated Cars may be located and take possession of such Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the

right to recover from Lessee any and all unpaid rental and mileage amounts and other past due amounts, plus the present value (using a 10 percent discount rate) of future lease rentals together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

(4) Without terminating this Agreement repossess the Cars. Lessor may sell or relet the same or any part thereof to others upon such terms as Lessor desires. The proceeds of any such sale or reletting shall first be applied to the expenses (including reasonable attorneys' fees) of the retaking and the sale or reletting of the Cars and of their delivery to the new owner(s) or lessee(s), and then to the payment of rent and any other sums due hereunder through the terms of this Agreement. Lessee shall pay any deficiency remaining due after the proceeds have been so applied. The election of Lessor to sell or relet the Cars and the acceptance of the Cars by a new owner or lessee shall not release Lessee from liability for any existing or future default in connection with any other covenant or promise herein contained.

The obligation to pay such deficiency or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Agreement and the retaking of the Cars.

14. Expiration or Termination

Lessee shall notify Lessor in writing, either, 90 days prior to the expiration of the Initial Term of any Schedule hereto or 90 days prior to the date of which Lessee may exercise any right of early termination, if any, expressly set forth in any Schedule hereto, of Lessee's desire to continue this Agreement or of Lessee's intention to exercise its early termination rights, only if expressly provided for hereunder or in an applicable Schedule, with respect to any Schedule to this Agreement.

Upon the expiration of this Agreement with respect to Cars on any Schedule, Lessee shall surrender possession of such Cars to Lessor pursuant to the early termination or expiration provisions in this Section and on the relevant Schedule, Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Agreement shall be in the following condition:

a) Each such Car shall be (1) delivered to Lessor, in a condition required by Section 6 of this Agreement, (2) in interchange condition in accordance with AAR and FRA rules and regulations, (3) suitable for loading of the commodities intended to be loaded in such Cars or commodities allowed in the applicable Schedule, (4) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee, and (5) free of any and all AAR Rule 95, as amended, damage.

b) Until the Cars are delivered to and accepted by Lessor pursuant to this Section, Lessee shall continue to be liable for and shall pay all rental at the rate being paid immediately prior to the expiration provided, however, if Lessor requests the return of the Cars and Lessee fails to return any Cars in its possession within thirty (30) days of such notification, Lessor, at its option, may increase without notice to Lessee the rate Lessee is required to pay to one hundred fifty percent (150%) of the rate being paid immediately prior to expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such expiration had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

c) Lessee shall bear the costs associated with remarking each Car's roadmark and number which remarking shall be performed at a facility mutually agreed to by Lessor and Lessee. Remarking shall include the following: (1) removal of existing mandatory markings and all company logos of Lessee; (2) complete cleaning of the area where new marks are to be placed as designated by Lessor; (3) application of new mandatory markings designated by Lessor; and (4) any transportation involved in moving each Car to and from

a suitable work area to perform the remarking set forth in this Section. Lessor shall use its reasonable efforts to insure that the costs associated with remarking each car are reasonable.

Notwithstanding expiration of the term of this Agreement or any Schedule, Lessee's obligations under the terms of this Agreement as to damage to the Cars shall continue to be Lessee's responsibility and such damage shall be repaired at Lessee's sole expense prior to the return of the Cars to Lessor; and Lessor may conduct such testing of the Cars, at Lessor's expense, to ensure that the Cars are free from such damage.

15. Representation, Warranties, and Covenants

Lessee represents, warrants and covenants as of the date hereof that:

a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated. Insofar as is material to Lessor's rights and Lessee's obligations under this Agreement, Lessee has the corporate power and authority to and is duly qualified and authorized to: (1) do business wherever necessary to carry out its present business and operations, (2) own or hold under lease its properties, and (3) perform its obligations under this Agreement.

b) The entering into and performance of this Agreement by Lessee has been duly authorized by all necessary corporate authority and will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, any agreement of Lessee. Nor will Lessee's entering into and performance of this Agreement result in the creation of any lien, charge, or security interest in this Agreement pursuant to any instrument to which Lessee is a part of by which it or its assets may be bound, except as expressly provided in Section 12 hereinabove.

c) There is no action or proceeding pending or threatened against Lessee before any court, administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.

d) There is no fact which Lessee has not disclosed in writing to Lessor, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, would alone or in combination with other factors have a material adverse impact on Lessee's business, condition, property, holdings or the ability of Lessee to perform its obligations under this Agreement.

16. Inspection

Lessee shall provide Lessor reasonable access, at any time during normal business hours, to any premises where the Cars may be located for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder. Lessee shall promptly, upon the request of Lessor furnish to Lessor a list, certified by an officer of Lessee, of all Cars then covered by this Agreement and information regarding movement and condition of the Cars, including such other pertinent information about the Cars as Lessor may request.

17. Indemnification

a) Lessee does hereby assume liability for, and does hereby unconditionally agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees and agents from and against and agrees to pay, when due, any and all losses, damages, liabilities, obligations,

penalties, fines, interest, payments, charges, demurrage claims, actions, suits, costs, expenses and disbursements, including reasonable legal expenses, of whatsoever kind and nature in contract or tort, ("Losses") including but not limited to, Lessor's strict liability in tort, arising out of: the use, possession, storage, operation, condition, repair, replacement, reconstruction, removal, return or other disposition of Cars, except for such Losses which arise from Lessor's negligence or to the extent Losses result solely from defective design, materials workmanship and/or parts which are not the obligation of Lessee under the terms of this Agreement or any Schedule hereto;

b) Lessee represents, warrants and covenants that (1) the Cars are "7-year property" (within the general classification of property in Section 168(e) of the Internal Revenue Code of 1986, as amended); (2) all income and loss associated with the Cars will be derived from sources within the United States; (3) Lessee has made no investment in the Cars; and (4) the Cars are complete for their intended use.

c) Lessee hereby represents, warrants and covenants that at no time during the term of this Agreement with respect to any Car will the Lessee take or omit to take, nor will it permit any permitted sublessee or assignee, to take or omit to take any action (whether or not such act or omission is otherwise permitted by the terms of this Agreement) which act or omission will result in the disqualification of any Car for, or the recapture of, all or any portion of the cost recovery deductions allowed under Section 168 of the Internal Revenue Code of 1986, as amended. Lessor shall provide notice to Lessee of any violation claimed by the Internal Revenue Service of the foregoing within ten (10) days of Lessor's receipt.

d) All of Lessor's rights privileges and indemnities contained in this Section shall survive the expiration or other termination of the Agreement and the rights, privileges and indemnities contained herein are expressly made for the benefit of, and shall be enforceable by Lessor, its successors and assigns.

18. Reports

Within 120 days after the end of each fiscal year of Lease, Lessee shall furnish to Lessor financial statements of income and changes in financial condition of Lessor for such year and a balance sheet of Lessee as of the end of such year, examined by independent public accountants selected by Lessee and bearing the audit report of such accountants.

19. Miscellaneous

a) This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights or obligations hereunder or sublease any Cars to any party or assign any Cars to any party which consent shall not be unreasonably withheld. Any purported assignment or sublease in violation hereof shall be void. Lessee will not permit or suffer any encumbrances or liens to be entered or levied upon any Car, other than such as may arise by, through, or under Lessor or any assignee of Lessor's rights hereunder.

b) It is understood and agreed that all rents and other sums due or to become due or at any time owing or payable by Lessee hereunder have been or may be assigned by Lessor, and that the Cars leased hereunder have been or may be mortgaged or sold by Lessor under a chattel mortgage or purchase agreement, and Lessee hereby consents to and accepts any such assignment, mortgage or sale. In the event an assignment of such rents and other sums is made, then the right, title and interest of such assignee in and to such rents and other sums and to receive and collect the same shall not be subject to any abatement, defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to Lessee or from any defects in the Cars. Any such assignee shall be entitled to all the privileges, powers and immunities of Lessor and may, but shall not be obligated to, perform any duty, covenant or condition required to be performed by Lessor under the

terms of this Lease, providing that nothing herein contained shall release Lessor of its obligations to Lessee hereunder and Lessee shall look solely to Lessor for the performance thereof. At Lessor's request, Lessee shall evidence its consent to the foregoing by executing a Consent and Agreement in the form of Exhibit A, attached hereto.

c) If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

d) Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition, financing or use of the Cars, in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedule hereto, and to confirm the subordination provisions contained in this Agreement.

e) Lessor's failure to exercise or delay in exercising any right, power or remedy available to Lessor shall not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power, or remedy. No waiver, indulgence or partial exercise by Lessor of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.

f) Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or telex or made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Greenbrier Railcar, Inc.
One Centerpointe Drive, Suite 200
Lake Oswego, OR 97035
Attn: President

Lessee: Westvaco Corporation
299 Park Avenue
New York, NY 10171
Attn: Manager Rail Operations

or to such other addresses as Lessor or Lessee may from time to time designate.

g) The terms of this Agreement and all rights and obligations hereunder shall be governed by the internal laws of the State of New York.

h) The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or termination of this Agreement.

i) This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

j) This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

Lessor: GREENBRIER RAILCAR, INC.

By:

Norris M. Webb

Title:

Vice President

Date:

3/12/91

Lessee: WESTVACO CORPORATION

By:

J. Nichols

Title:

Field Manager ^{etc}

Date:

2-22-91

L121101.WC

EXHIBIT B TO EQUIPMENT PURCHASE AND ASSIGNMENT AGREEMENTBILL OF SALE AND ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that The David J. Joseph Company, a Delaware corporation ("Seller"), in consideration of the sum of Ten dollars (\$10.00) and other valuable consideration paid by Unionbanc Leasing Corporation, a California corporation ("Purchaser"), the receipt whereof is hereby acknowledged, does hereby (a) bargain, sell and deliver unto Purchaser all of Seller's right, title and interest in and to the equipment (the "Equipment") listed and described Exhibit A, and (b) assign to Purchaser (i) all of Seller's rights, title and interests in, to and under the Lease Agreement dated as of dated as of December 14, 1990, as amended by an agreement dated July 18, 1991 between Seller and Westvaco Corporation (herein called "Lessee"), being herein called the "Lease"), including, without limitation, all rents and all other amounts due or to become due under the Lease, and (ii) the right to enforce, either in Purchaser's name or in the name of Seller, but without cost or expense to Seller, all of Seller's rights under the Lease. There is specifically excluded from this Bill of Sale and Assignment Seller's Retained Rights.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 9 OF THE EQUIPMENT PURCHASE AND ASSIGNMENT AGREEMENT DATED AS OF MAY 6, 1992 BETWEEN SELLER AND PURCHASER (THE "EQUIPMENT PURCHASE AND ASSIGNMENT AGREEMENT"), THIS SALE AND ASSIGNMENT IS WITHOUT RECOURSE TO SELLER, SELLER MAKES NO REPRESENTATION OR WARRANTY, WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATIVE AGREEMENTS OR THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, THE DESIGN AND CONDITION OF THE EQUIPMENT, THE MERCHANTABILITY, DURABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, OR THE CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE DOCUMENTS RELATING THERETO, AND SELLER HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY (WHICH DISCLAIMER PURCHASER BY ITS ACCEPTANCE OF THIS BILL OF SALE AND ASSIGNMENT HEREBY ACKNOWLEDGES). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DEFECTS, EITHER PATENT OR LATENT (WHETHER OR NOT DISCOVERABLE BY PURCHASER OR LESSEE) IN THE EQUIPMENT, OR FOR ANY DIRECT OR INDIRECT DAMAGE TO PERSONS OR PROPERTY RESULTING THEREFROM, OR FOR LESSEE'S OR PURCHASER'S LOSS OF USE OF THE EQUIPMENT OR FOR ANY INTERRUPTION IN LESSEE'S OR PURCHASER'S BUSINESS CAUSED BY LESSEE'S OR PURCHASER'S INABILITY TO USE THE EQUIPMENT FOR ANY REASON WHATSOEVER.

This Bill of Sale and Assignment is being executed and

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delivered pursuant to the Equipment Purchase and Assignment Agreement, to which reference is hereby made for additional provisions respecting the sale and assignment covered hereby.

All capitalized terms used herein which are not otherwise defined herein shall have the meaning given to such terms in the Equipment Purchase and Assignment Agreement

IN WITNESS WHEREOF, Seller has caused this Bill of Sale and Assignment to be duly executed in its name by its duly authorized officer, and its corporate seal to be affixed hereto, this _____ day of _____, 199__.

THE DAVID J. JOSEPH COMPANY

By _____

Its _____

Attest:

Assistant Secretary

(Corporate Seal)

Westvaco

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

On this _____ day of _____, 1992, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of THE DAVID J. JOSEPH COMPANY that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of the said instrument was his free act and deed.

NOTARY PUBLIC

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EXHIBIT A

1. Forty (40) 100-ton rotary dump woodchip gondola railcars with a 7,452 cubic foot capacity bearing the following marks and numbers:

WVCX 2120 through WVCX 2159, inclusive.